

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE UTAH DEPARTMENT OF TRANSPORTATION
And
THE CONFEDERATED TRIBES OF THE GOSHUTE INDIAN RESERVATION
REGARDING COORDINATION AND CONSULTATION ON FEDERAL-AID
HIGHWAY PROJECTS IN UTAH IN ACCORDANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT
SECTION 106 PROCESS AND 36 CFR PART 800**

WHEREAS, the Federal Government has a unique relationship with Indian tribes derived from the Constitution of the United States, treaties, Supreme Court doctrine, and Federal statutes whereby Indian tribes are recognized as sovereign nations. The Federal Highway Administration (FHWA), as a Federal agency, recognizes the government-to-government relationship between the United States and federally recognized Indian tribes and acknowledges the Confederated Tribes of the Goshute Indian Reservation as a sovereign nation with inherent powers of self-governance; and

WHEREAS, the FHWA is the agency of the United States Government that has the responsibility for administering the Federal-aid highway program in Utah and agrees to coordinate under a government-to-government relationship with Federally recognized tribal governments in compliance with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS the Confederated Tribes of the Goshute Indian Reservation (Tribe) is a sovereign government having an interest in the preservation and protection of its treaty rights and cultural heritage both within the boundaries of the Goshute Reservation and within the lands claimed and occupied by the Tribe at the time described in the "Treaty of Peace and Friendship" ratified by Congress and signed into law on January 17, 1865 by President Abraham Lincoln shown in Attachment 1, and the Goshute Business Council is the governing body for the Tribe and has the authority to participate in this Programmatic Agreement (PA); and

WHEREAS, the FHWA has requested the Utah Department of Transportation (UDOT), the primary recipient of Federal-aid highway funds in the State of Utah, to provide assistance to FHWA in complying with the body of environmental law that includes the National Environmental Policy Act (NEPA), the NHPA, and other similar laws; and

WHEREAS, the FHWA has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places that may be of interest to the Tribe and through this PA has consulted with the Tribe and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.14 of the regulations implementing Section 106 of the NHPA; and

Utah SHPO, and the Council (Attachment 3), but the FHWA remains legally responsible for all findings and determinations charged to the agency official and this authorization is not intended to reduce the FHWA's government-to-government consultation responsibilities.

- c. This PA sets forth all aspects of Tribal participation in the Section 106 process and is intended to facilitate the direct participation of the parties in all phases of an undertaking that has the potential to affect historic properties and cultural resources protected by treaty and applicable statutes. A request for Tribal participation shall be initiated at the earliest stage possible and shall continue from the planning stage, through scoping, design, construction, operation, and into maintenance, as appropriate, based on the context and the intensity of the undertaking and possible impacts of the undertaking to historic properties and cultural resources of concern to the Tribe.

2. Designation of point of contact and their responsibilities

- a. The individual designated as the primary point of contact for each party to the PA shall serve as the official representative responsible for responding to requests and issuing decisions under the provisions of this PA. Any party to this PA may identify others they wish to be included as secondary contacts. Secondary contacts shall be provided copies of transmitted information but are not responsible for responding to requests and making decisions.
- b. The role of the primary point of contact is to develop a relationship with other points of contact with the goal of a clearer understanding of the needs and concerns of all parties and to respect cultural resources. These individuals should strive to develop relationships that will result in more effective cultural resources management and improve the effectiveness and efficiency of the consultation process.
- c. Identification of the points of contact (Attachment 4):
 - 1. The FHWA's Contact:
The FHWA Tribal Coordinator is the primary point of contact for FHWA. The Division Administrator and the Environmental Program Manager are secondary contacts for FHWA.
 - 2. The Tribe's Contact:
The Cultural Resource Coordinator is the primary point of contact for the Tribe. The Tribal Chairman and the Tribal Administrator are secondary contacts for the tribe.

the Tribe. The *Project Initial Tribal Notification Form* will minimally contain the following information: the project name, a map of the project area, the project type, the potential for archaeological sites in the project area, and a request to the Tribe to respond with concerns. This information will be transmitted via email, read return receipt, and U.S. mailed to the Tribe's primary point of contact and the Tribal Chairman.

- e. The UDOT shall utilize the *Project Information Form* (Attachment 7) for transmitting information to the Tribe on the identification and evaluation of historic properties and resolution of adverse effects. The UDOT shall provide information about inventories of cultural resources for undertakings as soon as they become available. The UDOT may also ask to discuss this information with the Tribe, including whether further involvement by the Tribe is desired.
- f. The UDOT shall notify the Tribe by email or phone of unanticipated discoveries for projects in construction, in accordance with the provisions in Stipulation 5.
- g. The UDOT shall transmit notifications and information not otherwise addresses in this section of this PA to the Tribe via telephone, fax, email, or US mail. For telephone transmittals a record will be kept by the UDOT and the Tribe of all phone conversations.
- h. The FHWA and UDOT understand that some information about cultural resources or traditional knowledge or practices is sensitive. The FHWA and UDOT shall, at the request of the Tribe, treat certain matters of concern to the Tribe as sensitive. This may result in such matters not being transcribed or written records of such matters protected from public disclosure based on applicable laws (Section 304 of NHPA and Section 9(a) of the Archaeological Resources Protection Act (ARPA)).
- i. The FHWA and UDOT may request to meet with the Tribe on any matter covered by this PA or regarding performance of this PA.

4. Procedures for responses from the Tribe

- a. The Tribe understands that in order to best have its issues addressed, any questions or concerns it has needs to be transmitted to the UDOT as early as possible, ideally when a project is still in its initial planning stages. Certain requests for information from the Tribal primary point of contact may require the Tribe to consider the matter internally. For these and other matters, the Tribe commits to sharing information, questions, and concerns with the UDOT, as needed, even though the Tribe may still be deliberating on such matters.
- b. The Tribe shall respond after it has received either a *Project Initial Tribal Notification Form* or a *Project Information Form*. The Tribe will complete the *Tribal Response* sections on the forms as completely as possible and make a

6. Native American Remains

- a. In the event Native American burials that may be culturally affiliated with the Tribe are anticipated or discovered during archaeological excavation or during construction of the project, they shall be treated pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 *et seq.*) and the Utah Native American Graves Protection and Repatriation Act of 1992 (U.C.A. 9-9-401 *et seq.*, and its implementing Rule R230-1).
- b. During the excavation of any Native American human remains, the UDOT shall take the following measures: ensure that they are treated respectfully and with dignity at all times; provide security for the site to prevent vandalism; and no photographs will be taken of human remains or open graves other than photo-documentation needed for recordation of the excavation;
- c. The UDOT shall provide an opportunity for the culturally affiliated Tribe to visit the site and provide comments during archaeological excavation and for the Tribe to perform appropriate ceremonies.

7. Dispute Resolution

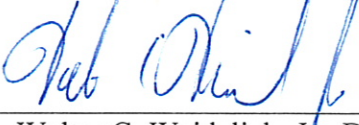
- a. Should any party to this PA object in writing to FHWA regarding any action carried out or proposed with respect to a particular undertaking or implementation of this PA, the FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall consult with all parties (unless the information is identified as confidential to the Tribe). After consultation with the other parties, the FHWA shall make a decision and forward all documentation to all parties. If the objection is relative to Section 106 consultation, the FHWA shall forward all documentation relevant to the objection to the Council pursuant to 36 CFR 800.6(b), including the FHWA's proposed response to the objection.
- b. The FHWA's responsibility to carry out all actions under this PA that are not the subject of the objection shall remain unchanged.

8. Monitoring Implementation of this Agreement

- a. The FHWA may review activities carried out pursuant to this PA. The UDOT shall facilitate this review by compiling information to document the effectiveness of the PA and by making the information available on an annual basis to the FHWA and the Tribe in the form of a written report. Categories of information will include, but are not limited to, a list of projects for which consultation was


SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: 
Walter C. Waidelich, Jr., Division Administrator

Date: 7/29/08

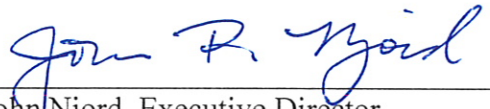
CONFEDERATED TRIBES OF THE GOSHUTE INDIAN RESERVATION

By: 
Rupert Steele, Chairman

Date: 7/29/08

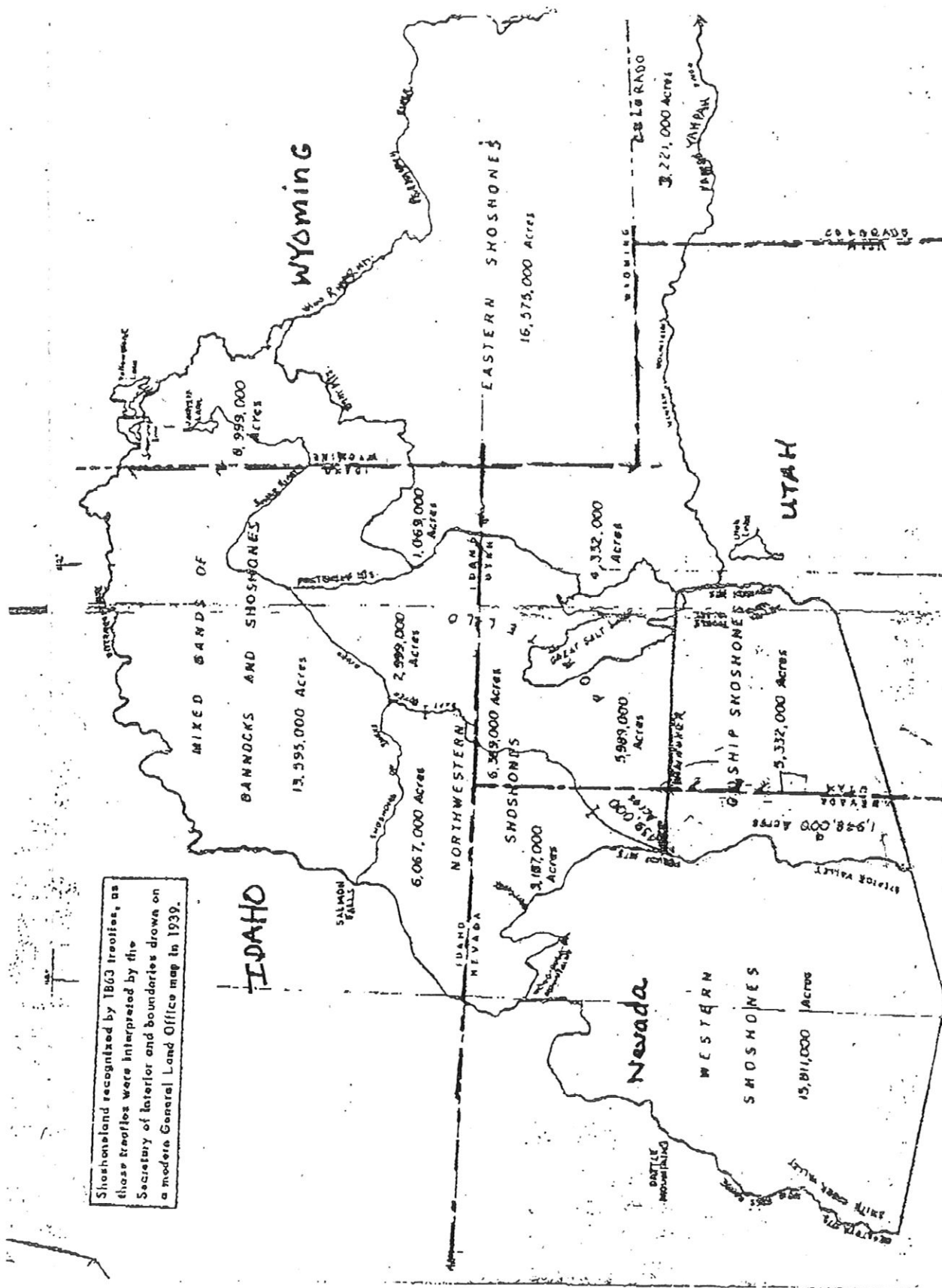
INVITED SIGNATORY

UTAH DEPARTMENT OF TRANSPORTATION

By: 
John Njord, Executive Director

Date: 7-29-08

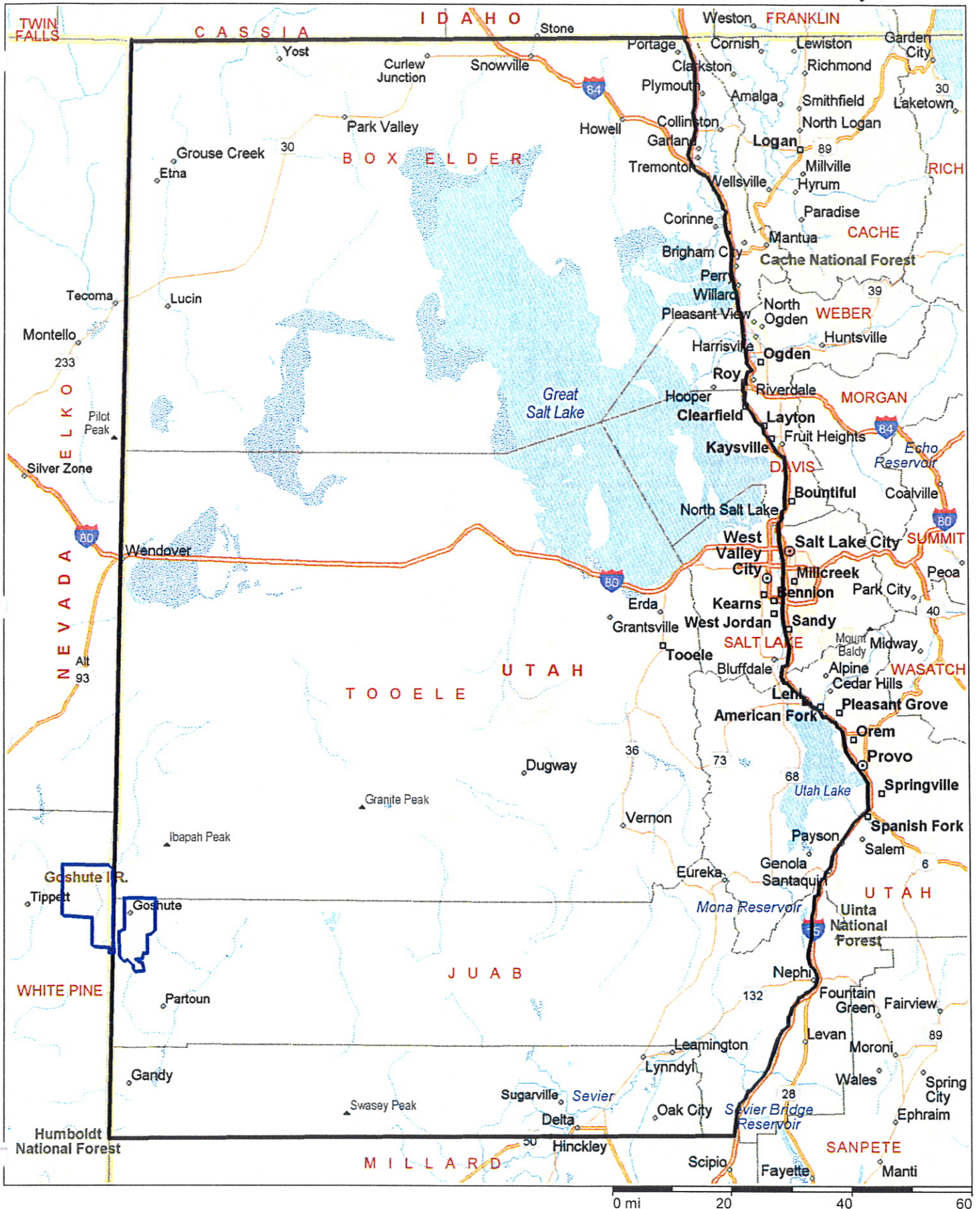
HISTORICAL GEOGRAPHIC AREA OCCUPIED BY TRIBE



ATTACHMENT 2

GEOGRAPHIC AREA OF INTEREST FOR TRIBAL CONSULTATION

Confederated Tribe of Goshute Indians Tribal Consultation Boundary



ATTACHMENT 3

STATEWIDE PROGRAMMATIC AGREEMENT

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE UTAH DEPARTMENT OF TRANSPORTATION,
THE UTAH STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**SECTION 106 IMPLEMENTATION FOR FEDERAL-AID TRANSPORTATION
PROJECTS IN THE STATE OF UTAH**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Program) in the state of Utah by funding and approving state and locally sponsored transportation projects that are administered by the Utah Department of Transportation (UDOT); and

WHEREAS, the Utah FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of Utah complies with Section 106 of the National Historic Preservation Act (NHPA), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, UDOT administers Federal-aid projects throughout the State of Utah as authorized by Title 23 U.S.C. 302 and Sections 72-1-201 and 72-2-111 of the Utah Code; and

WHEREAS, the responsibilities of the Utah State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that implementation of the Program in Utah may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Utah State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.14(b); and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Utah and for affording the Council a reasonable opportunity to comment on undertakings covered by this agreement; and

WHEREAS, FHWA has notified the public, Federal and State agencies, Certified Local Governments (CLGs), and Federally recognized Indian tribes (Tribes) with ancestral lands in Utah about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Confederate Tribes of Goshute Reservations, Fort Washakie Arapaho, Hopi, Fort Washakie Shoshone, Navajo Nation, Northwestern Band of Shoshone Nation, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Skull Valley Band of Goshute Indians, Ute Indian Tribe, Ute Mountain Ute Tribe, White Mesa Ute Tribe; and

- E. Through this PA, FHWA and UDOT establish two tiers of project review, dependent upon the type of impacts to historic properties.
 - 1. Tier 1 Project Review: Tier 1 projects have the potential to affect historic properties, but following screening specified in Attachment 4, may be determined to require no case-by-case review or consultation with the SHPO because they result in a finding of no historic properties affected. Tier 1 undertakings must meet the criteria outlined in Stipulation VIII.A.4.
 - 2. Tier 2 Project Review: Tier 2 projects result in a finding of no adverse effect or adverse effect.
- F. The FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. UDOT may assist FHWA if individual Tribes agree to alternate procedures.
- G. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities. For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.
- H. This Agreement does not supercede existing agreements currently in use in Utah by the FHWA, SHPO, Council, and UDOT, except for the June 6, 1990 delegation letter (referenced above). These existing agreements remain in force and are separate from this Agreement. A list of these agreements is attached hereto as Attachment 2.
- I. Cooperating Federal Agencies who recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and UDOT follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and UDOT.

II. DEFINITIONS

- A. For purposes of this Agreement, the definitions provided in 36 CFR 800.16 (a) through (z) inclusive shall apply whenever applicable.
- B. There are three classes of action defined in the Council on Environmental Quality regulations (40 CFR 1500) that implement the National Environmental Policy Act (NEPA): Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS).
- C. SAFETEA-LU = Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59).

III. PROFESSIONAL QUALIFICATIONS STANDARDS

All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739) and who has been permitted (for archaeology only) by the state of Utah in accordance with U.C.A. 9-8-305 and its implementing rules, and who meets permit requirements of other agencies as appropriate. However, nothing in this stipulation may be interpreted to preclude FHWA or UDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

9. Determine whether historic properties may be affected by the undertaking. Assess effects by applying the criteria of adverse effects as described in 36 CFR 800.5(a)(1)
10. In consultation with FHWA, the SHPO, and the Council (if it has chosen to participate), resolve adverse effects through the development, circulation, and execution of a Memorandum of Agreement (MOA), if appropriate.
11. Ensure conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, UDOT's Guidelines for Archaeological Survey and Testing (2000) and any successors to those guidelines, and applicable guidelines and procedures of land-managing agencies whose lands may be affected by the undertaking.
12. The UDOT PQS shall submit to the Utah Division of State History (UDSH) copies of all fieldwork reports, Intermountain Antiquities Computer Site Forms (IMACS), Reconnaissance Level Survey (RLS) forms, Intensive Level Survey (ILS) forms, and any other relevant documents.
13. Ensure curation of archaeological materials produced under this PA at a facility meeting the standards of 36 CFR 79 and U.C.A. 53B-17-603, as appropriate.

V. CONSULTATION WITH TRIBES

- A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.
- B. In accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by UDOT and invited by FHWA to be consulting parties.
- C. UDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- D. UDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- E. FHWA may ask UDOT to assist in consultation if the individual Tribes agree to alternate procedures.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Consulting Parties

1. Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR 800.2(c)(5) and 800.3(f). Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties. Other parties entitled to be consulting parties shall be invited by UDOT to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by UDOT to participate in the Section 106 process.
2. UDOT shall invite any local governments (including Certified Local Governments, or CLGs) or applicants that are entitled to be consulting parties under 36 CFR 800.2(c). UDOT shall consider all written requests of individuals and organizations to participate as consulting parties and determine which should be consulting parties for the undertaking.

- F. The parties to the Programmatic Agreement, and affected tribes, will be notified once the MOU has been signed.

VIII. PROJECT REVIEW

A. Tier 1 Project Review

1. Tier 1 undertakings are those undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined to require no further review or consultation under this Agreement. FHWA retains ultimate authority, responsibility, and liability, unless the project is processed under Stipulation VII. Pursuant to consultation with the other signatories to this Agreement, FHWA has identified undertakings that meet certain criteria and that will be addressed in accordance with Attachment 4 to this Agreement. The undertakings classified in this attachment as Tier 1 undertakings do not require case-by-case review by SHPO, but may be reviewed by the SHPO in a quarterly report under this Agreement when the steps set forth in the Attachment have been satisfactorily completed and when UDOT determines that no condition of the undertaking necessitates further review pursuant to this Agreement.
2. The PQS is responsible for screening undertakings to determine if those individual undertakings require further consideration, or if they may be determined not to require further review or consultation under the terms of this Agreement. The UDOT PQS may consult at any time, either formally or informally, with the SHPO on any undertaking.
3. The PQS shall include the identification of mandatory storage, disposal, or borrow areas and construction easements, prior to the screening process. If additional project areas are added to a screened undertaking, the undertaking must be re-screened.
4. The criteria for determining if an undertaking requires no further review and consultation beyond the screening assessment and documentation of decision making by UDOT, are as follows:
 - a. Has no known public controversy based on historic preservation issues; and
 - b. Has one of the following effect findings:
 - i. No Historic Properties Affected: no sites present, as determined by UDOT PQS; or
 - ii. No Historic Properties Affected: no historic properties (i.e., eligible for the National Register) present, as determined by UDOT PQS; or
 - iii. No Historic Properties Affected: Historic properties are present, but are completely avoided by the undertaking and there is no or negligible potential for adverse indirect effects.
5. If a cultural resource inventory is conducted under this stipulation, any cultural resource reports generated from the survey shall be submitted to the UDSH for filing.
6. The UDOT Standard Specification 01355, Part 1.10, Inadvertent Discovery Of Historical, Archaeological, Or Paleontological Objects (Attachment 5), will be included in all environmental documents (CEs, EAs, EISs).
7. The requirements for reporting on the projects that qualify and are processed as Tier 1 undertakings will be in accordance with Attachment 4.
8. The PQS will ensure that the documentation in Attachment 4 is included in the appropriate NEPA document and project file.
9. UDOT administratively completes Section 106 activities, but FHWA retains authority, responsibility, and liability for all actions, findings, and determinations, unless the project is classified as a Categorical Exclusion pursuant to the MOU in Attachment 1.

4. Identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and should be consistent with SHPO guidance, FHWA guidance, UDOT Guidance, and any other guidance, methodologies, agreements, or protocols that FHWA, UDOT, and the SHPO agree should be used to identify properties, including those of other land-managing agencies.
5. If no historic properties are found to be present in the APE, the project will be processed as a Tier 1, in accordance with Stipulation VIII.A.

C. Evaluating Historic Significance

1. UDOT shall evaluate the historic significance of identified properties in accordance with 36 CFR 800.4(c), and shall make appropriate findings regarding eligibility. Where historic property boundaries have not previously been established, the PQS may identify recommended boundaries, following standards set forth in National Register Bulletin 21, Defining Boundaries for National Register Properties. UDOT shall consult with the SHPO on the outcome of identification and evaluation of historic resources.
2. For undertakings that have properties that are determined by the PQS to be not eligible for inclusion in the NRHP, the project will be processed as a Tier 1, in accordance with Stipulation VIII.A.
3. UDOT may simultaneously request SHPO concurrence on findings of inventory, eligibility, and effect covered by 36 CFR 800.3 through 800.6, provided other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR 800.2(d).
 - a. If the SHPO fails to comment on the multiple findings contained in a submission within 30 calendar days of receipt, UDOT may assume they have no objection and proceed to the next step in the consultation process pursuant to 36 CFR 800.3(c)(4).
4. Agreements regarding the NRHP eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement, UDOT shall first consult with the disagreeing party to resolve the disagreement.
 - a. If the disagreement cannot be resolved through informal consultation, UDOT shall notify FHWA (unless the project is processed under Stipulation VII), whereupon UDOT, FHWA, the SHPO, and any consulting party shall consult to resolve the disagreement in accordance with a time frame specified by FHWA.
 - b. If the disagreement is not resolved, FHWA (unless the project is processed under Stipulation VII) shall refer the issue to the Keeper of the National Register to obtain a determination of eligibility.

D. Finding of Effect

1. No Historic Properties Affected

- a. If UDOT finds that either there are no historic properties present or there are historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), UDOT shall make a finding of "no historic properties affected" (36 CFR 800.4(d)(1)).
- b. For projects processed as Tier 1 undertakings, the findings will be documented in the quarterly reports, and documentation submitted quarterly.
- c. UDOT shall notify all consulting parties, and make the documentation available for public inspection prior to approving the undertaking

- g. A copy of the MOA shall be provided to each signatory, invited signatory, and concurring signatory.
- h. Once finalized, the measures to resolve adverse effects shall be incorporated into the undertaking, and the undertaking may be implemented.
- i. If the UDOT determines that an undertaking may adversely affect a National Historic Landmark, UDOT will notify FHWA, who shall request the SHPO, the Council, and Secretary of the Interior, as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR 800.10.

C. Resolving Objections

- 1. If FHWA, the SHPO, and UDOT are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, they shall invite the Council to participate in the resolution process pursuant to 36 CFR 800.6(b)(2).
- 2. If the parties fail to agree to measures to resolve the adverse effects, FHWA, the SHPO, or the Council may terminate consultation pursuant to 36 CFR 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR 800.7.

X. EMERGENCY SITUATIONS

- A. For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system/facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system/facilities; 3) protect remaining highway facilities; or 4) restore essential traffic.
 - 1. These repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
 - 2. If the emergency repair project could affect historic properties, UDOT shall notify the SHPO, the FHWA, and Tribes within 24 hours. The SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
 - 3. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, UDOT will comply with the procedures in Stipulation IX of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
 - 4. For projects taking longer than 30 days for repair, UDOT will comply with the procedures in Stipulation IX.
 - 5. Written notification of an emergency action shall be provided to the SHPO. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

XI. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When UDOT's identification efforts in accordance with Stipulation IX.B indicate that historic properties are likely to be discovered during implementation of an undertaking, UDOT shall include in any environmental document a plan for discovery of such properties. Implementation

5. For projects processed as Tier 1 projects, reports and forms will be submitted on a quarterly basis, in accordance with Stipulation VIII.A.

B. Monitoring Implementation of this Agreement

1. FHWA, the SHPO, and Council may review activities carried out pursuant to this Agreement. UDOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, the SHPO, and Council in the form of a written report. Categories of information can include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by UDOT in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.
2. UDOT shall prepare the written report of these findings annually following execution of the Agreement. The initial report shall be prepared following completion of the first full Federal fiscal year under this Agreement. UDOT shall submit the annual reports to FHWA, the SHPO, and Council no later than three (3) months following the end of the Federal fiscal year (September 30).
3. UDOT, FHWA, and SHPO will meet annually to evaluate the Agreement, to suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement. Prior to any such meetings, the Council will be notified and may participate at its discretion. Thirty days prior to the annual evaluation, UDOT shall submit the report of the previous year's activities to FHWA, SHPO, and Council.
4. UDOT shall provide notice to the public that the annual report herein prescribed is available for public inspection and ensure that potentially interested members of the public are made aware of its availability and that the public may comment to signatory parties on the report. FHWA and UDOT, in consultation with the SHPO and Council, shall identify the specific recipients of the public notice herein described.
5. At the request of any other signatory party to this Agreement, FHWA shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments.
6. In conjunction with the review of the reports prepared by UDOT pursuant to this Stipulation, the signatory parties shall consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Program on historic properties in Utah.
7. If any signatory party determines that a UDOT Region (there are four) is not meeting its responsibilities under this Agreement, measures will be taken to resolve the concerns with the UDOT PQS, and the Central PQS if appropriate.

C. Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to UDOT or FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the

E. Termination

1. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII.D, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
4. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings, as stated in Stipulation XIII.D.5.
5. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.
6. If this Agreement is terminated and UDOT has assumed Section 106 compliance responsibility in accordance with the MOU in Attachment 1, UDOT shall comply with 36 CFR 800.4 through 800.6.

F. Confidentiality

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA., Section 304 allows UDOT to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if UDOT determines that disclosure may 1)cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3)impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

G. Duration of Agreement

This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless it is terminated prior to that time. Ninety days prior to the conclusion of the ten year period, UDOT will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will automatically be extended for an additional ten years. If any party objects to extending the Agreement, or proposes amendments, UDOT will consult with the parties to consider amendments or other actions to avoid termination.

ATTACHMENT 4

POINTS OF CONTACTS

Confederated Tribes of the Goshute Indian Reservation

Primary:

Ms. Mary Pete, Cultural Resource
Coordinator
P.O. Box 6104
195 Tribal Center Road
Ibapah, UT 84034
(435)234-1308 (work)
(435)234-1162 (fax)
marypete@goshutetribe.com

Secondary:

Mr. Rupert Steele, Chairman
P.O. Box 6104
195 Tribal Center Road
Ibapah, UT 84034
(435)234-1302 (work)
(435)234-1162 (fax)
rupertsteele@goshutetribe.com

Secondary:

Mr. Ed Naranjo, Tribal Administrator
P.O. Box 6104
195 Tribal Center Road
Ibapah, UT 84034
(435)234-1138 (work)
(435)234-1162 (fax)
ednaranjo@goshutetribe.com

Federal Highway Administration

Primary:

Ms. Brenda Redwing, Tribal Coordinator
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118-1847
(801) 963-0182 (main number)
(801) 963-0093 (fax)
Brenda.Redwing@dot.gov

Secondary:

Mr. Walter Waidelich, Division
Administrator
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118-1847
(801) 963-0182 (main number)
(801) 963-0093 (fax)
Walter.Waidelich@dot.gov

Secondary:

Mr. Edward Woolford
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118-1847
(801) 963-0182 (main number)
(801) 963-0093 (fax)
Edward.Woolford@dot.gov

ATTACHMENT 5

PROJECTS EXEMPTED FROM TRIBAL CONSULTATION

A. Pavement Related

1. Resurfacing the existing roadways without other geometric changes. Existing subbase and original ground remains under the roadway.
2. Sidewalk replacement including no additional excavation outside existing disturbed area. Disturbance is less than 2 feet below existing surface. (Mostly done in urban areas)

B. Maintenance Related

1. Pavement repairs including joint repairs, patching, and crack sealing of roads where the construction does not disturb original ground.
2. Re-striping lines (all type of pavement markings) on roads where they previously existed and new striping when necessary to conform to the Manual on Uniform Traffic Control Devices (MUTCD).
3. Bridge painting of all types of bridges where the construction does not disturb original ground.
4. Bridge and other structure repairs or shoring where the construction does not disturb original ground.

C. Signing Related

1. Installation and replacement of signs including replacement of existing signs in-kind.
2. Installation of driven foundation posts 6" or less in diameter for signs. Drilled shaft foundations up to a maximum diameter of 36"
3. Installation of any other kind of sign that does not disturb original ground.

ATTACHMENT 6

INITIAL NOTIFICATION FORM

UDOT Project Initial Tribal Notification Form
Section 106 Consultation

(for UDOT use only)

Date: _____ UDOT Project # _____ UDOT PIN _____ Route # _____
City/County: _____ Contact Name: _____
Telephone: _____ Fax: _____ Email: _____
Brief Project Description (e.g. adding lanes, bridge replacement, new roadway on new alignment [include map]): _____

Archaeological Potential (Prehistoric or Historic Sites)

- | | |
|--|--|
| <input type="checkbox"/> Known prehistoric sites in the project area
<input type="checkbox"/> Known historic sites in the project area
<input type="checkbox"/> Likely to find prehistoric sites in the project area
<input type="checkbox"/> Likely to find historic sites in the project area | <input type="checkbox"/> Unlikely to find prehistoric sites in the project area
<input type="checkbox"/> Unlikely to find historic sites in the project area
<input type="checkbox"/> No expected ground disturbance
<input type="checkbox"/> Other |
|--|--|

Comments

Tribal Response

(for Tribal use only)

Tribal contact for this project:

Tribe:
Name:
Address:
City, State, Zip:
Telephone:
Fax:
Email:
Copies to:

Note: If any of the information to the left is incorrect, please provide changes to the UDOT contact above, or, to:

Betsy Skinner
Cultural Resource Program Manager
Utah Department of Transportation
4501 South 2700 West, Box 148450
Salt Lake City, UT 84114-8450
eskinner@utah.gov

Comments

- | | | | |
|--|------------------------------|-----------------------------|-----------------------------------|
| 1. Do you wish to be a Section 106 consulting party on this project? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
| 2. If you do not wish to be a Section 106 consulting party, do you wish to continue to be involved in the development of this project? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
| Note: If your answer is "Not Sure," UDOT will continue to provide information. | | | |
| 3. Are you aware of any traditional religious or culturally important places in or near the project area? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Sure |
| 4. If yes, can you share details about the place (e.g., location and other characteristics) and any concerns you may have? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| 5. Is this information sensitive? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |

Additional Comments

Name of person completing this form, if different from above (please print): _____

Signature: _____ Date: _____

ATTACHMENT 7

INFORMATION FORM

**UDOT Project Information Form
Section 106 Consultation**

(for UDOT use only)

Date: _____ UDOT Project # _____ UDOT PIN _____ Route # _____
City/County: _____ Contact Name: _____
Telephone: _____ Fax: _____ Email: _____
Brief Project Description (e.g. adding lanes, bridge replacement, new roadway on new alignment): _____

Information for which a response is requested (highlight checked line)

- | | |
|---|---|
| 1. <input type="checkbox"/> Archaeological resources identified | 6. <input type="checkbox"/> Approach to Resolution of Adverse Effects |
| 2. <input type="checkbox"/> Determinations of eligibility | 7. <input type="checkbox"/> Draft Memorandum of Agreement |
| 3. <input type="checkbox"/> Determination of effects | 8. <input type="checkbox"/> Draft data recovery plan |
| 4. <input type="checkbox"/> Draft testing plan | 9. <input type="checkbox"/> Draft data recovery report |
| 5. <input type="checkbox"/> Draft testing report | 10. <input type="checkbox"/> Other |

Enclosures

Documents/Information enclosed: _____

Comments

Tribal Response

(for Tribal use only)

Tribal contact for this project:

Tribe: _____	Note: If any of the information to the left is incorrect, please provide changes to the UDOT contact above, or, to: Betsy Skinner Cultural Resource Program Manager Utah Department of Transportation 4501 South 2700 West, Box 148450 Salt Lake City, UT 84114-8450 eskiner@utah.gov
Name: _____	
Address: _____	
City, State, Zip: _____	
Telephone: _____	
Fax: _____	
Email: _____	
Copies to: _____	

Document Comments

- | | | | |
|---|------------------------------|-----------------------------|---|
| 1. Was the survey adequate? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| Should additional survey be conducted? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 2. Do you agree with the recommendations of eligibility? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 3. Do you agree with the recommendations of effect? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 4. Do you agree with the draft testing plan? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 5. Is the draft testing report adequate? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 6. Do you agree with the approach to resolution of adverse effects? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 7. Do you agree with the draft Memorandum of Agreement? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 8. Do you agree with the draft data recovery plan? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| 9. Is the draft data recovery report adequate? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not applicable |
| Do you have any other concerns? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
- If yes please inform UDOT how to proceed to address the tribes concerns (add pages if necessary): _____

Additional Comments

Name of person completing this form, if different from above (please print): _____

Signature: _____

Date: _____